Supreme Court, U.S.
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No. 04-1680

IN THE
Supreme Court of the United States

IRA R. BANKS,

Petitioner,

v.

CHASE MANHATTAN BANK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

I. NATURE OF THE CASE

On February 24, 1997, the petitioner, Ira R. Banks (hereinafter "Mr. Banks"), executed a note and mortgage to BNC Mortgage, Inc. in the sum of $42,000.00. The note was endorsed and the mortgage was assigned to the respondent, The Chase Manhattan Bank, as Trustee of IMC Home Equity Loan Trust 1997-4 under the pooling and servicing agreement dated as of August 1, 1997 (hereinafter "Chase Manhattan Bank"). On May 14, 2003, Chase Manhattan Bank commenced a foreclosure action against Mr. Banks in the Milwaukee County Circuit Court for the State of Wisconsin. Chase Manhattan Bank's Complaint alleged that Mr. Banks failed to tender monthly mortgage payments as required by the note and mortgage and therefore Chase Manhattan Bank sought to foreclose the mortgage.

II. PROCEDURAL STATUS

Mr. Banks filed an Answer in response to Chase Manhattan Bank's Complaint. On July 11, 2003, the Milwaukee County Circuit Court held a scheduling conference and issued a Scheduling Order.

On November 17, 2003, Chase Manhattan Bank filed a Notice of Motion and Motion for Summary Judgment along with supporting Affidavits, Brief and proposed Order and Judgment of Foreclosure. In opposition to the summary judgment motion, Mr. Banks filed a Memorandum, Affidavit and Response.

The Milwaukee County Circuit Court heard Chase Manhattan Bank's Motion for Summary Judgment on January 5, 2004. The Milwaukee County Circuit Court granted Chase

Manhattan Bank's motion and executed an Order and Judgment of Foreclosure on January 21, 2004. Said Judgment was entered on February 4, 2004. Mr. Banks filed a Notice of Appeal with the Wisconsin Court of Appeals on March 22, 2004.

In response to the appeal, Chase Manhattan Bank filed a Motion for Summary Disposition which was denied by the Wisconsin Court of Appeals. The Wisconsin Court of Appeals affirmed the Milwaukee County Circuit Court's decision on November 9, 2004.

Subsequent to the Wisconsin Court of Appeals affirming the Milwaukee County Circuit Court's decision, Mr. Banks filed a Petition for Review with the Wisconsin Supreme Court. On January 11, 2005, the Wisconsin Supreme Court denied Mr. Banks' Petition for Review. Mr. Banks filed his Writ of Certiorari with the U.S. Supreme Court on February 9, 2005.

ARGUMENT

U.S. Supreme Court Rule 10 provides that "Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." U.S. Supreme Court Rule 10 goes on to outline three different types of cases which the Court often uses its discretion to accept.

In reviewing the Writ of Certiorari Mr. Banks has filed in this particular instance, Mr. Banks' Writ is woefully deficient. Mr. Banks misquotes U.S. Supreme Court Rule 17 in the Statutes and Rules section of his Writ. The rule which Mr. Banks quotes is actually Rule 10, not Rule 17.

Mr. Banks' Writ is not only difficult to read and to comprehend, but it clearly does not provide any compelling reasons why the U.S. Supreme Court should grant his Writ of

Certiorari. Furthermore, Mr. Banks' jurisdictional statement as required by U.S. Supreme Court Rule 14(1)(e) is inadequate.

CONCLUSION

Mr. Banks has had his day in court. The Milwaukee County Circuit Court correctly granted Chase Manhattan Bank's Motion for Summary Judgment and the Wisconsin Court of Appeals affirmed the Milwaukee County Circuit Court's decision (see Banks Appendix B).

Mr. Banks' Writ of Certiorari lacks any substantial compelling reasons and the necessary jurisdictional basis to why the U.S. Supreme Court should accept his Writ.

Based upon the foregoing, Chase Manhattan Bank respectfully submits that the Writ of Certiorari of Ira Banks be denied.

Respectfully submitted,

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Dated: July 14, 2005.